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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,886	01/18/2001	Brian Keith Schmidt	0007056-0060/P5320/BBC	9319
23879	7590	05/31/2005	EXAMINER	
BRIAN M BERLINER, ESQ O'MELVENY & MYERS, LLP 400 SOUTH HOPE STREET LOS ANGELES, CA 90071-2899			BRUCKART, BENJAMIN R	
		ART UNIT		PAPER NUMBER
		2155		

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.	09/765,886	Applicant(s) SCHMIDT, BRIAN KEITH
Examiner	Art Unit 2155	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) The period for reply expires 3 months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) They raise the issue of new matter (see NOTE below);
 (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See below. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. Applicant's reply has overcome the following rejection(s): _____.
 6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-6, 8-13 and 15-20.

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing, a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. Other: _____

1

Continuation of 11. does NOT place the application in condition for allowance because:

The objection to the specification is withdrawn in the final action as a result of applicant's accepted amendment to the specification.

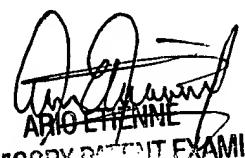
With respect to claims 1, 8 and 15, Applicant argues the Vmware reference does not teach "promotion said compute capsule to a first class object."

The examiner respectfully submits:

Applicant supports the definition of a first class object in his arguments but those definitions are not in the claimed limitations. Because they are not disclosed in the claim limitation, the examiner can broadly interpret the claimed limitation. Therefore the rejection stands as 102(b) with Vmware because page 5, resource management teaches the priorities of the virtual machines and the applications of VMware Virtual Platform processes and can be controlled. The examiner believes the definition as argued for the object as having no restrictions placed on it and being passable as an argument to a function would overcome the prior art.

With respect to claims 2, 4, 5, 9, 11, 12, 16, and 18-19 Applicant argues allowable based on the issues with claim 1. The examiner maintains the rejection of claim 1 addressing this issue. Applicant also argues claim 2 where "system resources comprise a guaranteed share of resources." The VMware reference teaches the guaranteed share of resources with Dircks. Applicant has further defined guaranteed share of resources as "providing isolation from other users of the same system" and has pointed to the specification. The examiner interprets the claims in light of the specification but does not read the specification into the claims. The claim language is still broad and open to interpretation in which the examiner reads the claims as resource management providing resources to programs and data files, which are needed by users with access restrictions. The access restrictions allow control of the resources allowing a user access to a specified resource. The resources shared among other users are allocated and thus guaranteed to the requesting user. With respect to the argument that there is no incentive to combine the two references. The VMware reference teaches running an application on top of a file system, and allowing the file system to control access to the resources. The Dircks reference teaches a desktop environment restricting access and allocating resources to users (Dircks: col. 1, lines 32-67; col. 3, lines 22-37). The Dircks reference further teaches the invention does this transparently and without interference (Dircks: col. 1, lines 32-67). Therefore it would have been obvious to one of ordinary skill in the art to create the method of managing resources as taught by VMware while employing restricting means to guarantee access to a shared set of resources as taught by Dircks in order to transparently and seamlessly allocate and give access to resources.

The applicant is encouraged to further detail the broad claims with the limitations as argued and further details from the specification to distinguish the instant application from other prior art references.



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